IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9149 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HALIMABEN ABDUL SATTAR ADAM THR'PAH-ABDUL SATAR ADAM ALI & 1 - Petitioner(s)

Versus

COMPETENT AUTHORITY SAFEMA/NDPS & 2 - Respondent(s)

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Appearance :

MR RS SANJANWALA for Petitioner(s) : 1 - 2.
MS SEJAL K MANDAVIA for Respondent(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
DS AFF.NOT FILED (R) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 15/09/2005

CAV JUDGMENT

1. By filing this petition under Article 227 of the Constitution of India, the petitioner

has prayed to issue a writ of certiorari and/or any other appropriate writ, order or direction in the nature of certiorari quashing and setting aside the impugned order dated 14.02.2005 passed by the Tribunal and further prayer is made to direct the Tribunal to condone the delay and hear the appeal on merits.

2. It appears from the record that, earlier, the petitioners have preferred Special Civil Application No.10484 of 2000 challenging the legality and validity of the orders no.16/SAFEMA/Ahd./99 dated 21.07.1999, no.20/SAFEMA/Ahd./99 dated 13.08.1999 and no.22/SAFEMA/Ahd./99 dated 14.09.1999 in so far as they relate to forfeiture of house property i.e. “Kamani Bhavan” bearing survey no.1074, plot no.93, city survey ward no.5 situated at Vijaynagar Hospital Road, Bhuj. This Court (Coram : N.G.Nandi, J) (as he then was) by order dated 11.02.2004 had dismissed the petition as withdrawn permitting the petitioners to avail alternative remedy, if any. Thereafter, the petitioners preferred appeal before the Appellate Tribunal for Forfeited Property, New Delhi. The said appeal is dismissed as time barred since the delay in filing the said appeal was not condoned by the Appellate Tribunal.

3. Being aggrieved by the said order of the Appellate Tribunal dated 14.02.2005, the petitioners have preferred the present petition for the aforesaid relief.

4. Heard the learned advocates for the parties.

5. Having heard the learned advocates for the parties and in view of the fact that the appeal is dismissed on the ground of delay since the same has been filed beyond the period of 60 days, the present petition is required to be allowed. It is, time and again, held by the Apex Court that liberal view should be taken to condone the

delay unless it is found that the delay is deliberate or inexcusable or on account of indifferent conduct of the party. It is equally true that the appeal was required to be filed within a reasonable period i.e., within a prescribed period of limitation. Considering the facts and circumstances of the case, the petition is allowed. Rule is made absolute. However, the petitioners are directed to pay the cost of this petition to the respondents which is quantified at Rs.5,000/-, which is to be paid to the respondents within a period of 15 days from today. The Appellate Tribunal is directed to dispose of the appeal preferred by the petitioners on its own merits and in accordance with law. It is, however, made clear that this court has not expressed any opinion on merits of the appeal and it is ultimately for the appellate authority to decide the same as stated earlier in accordance with law.

(SHARAD D DAVE, J)

srilatha